Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No: 86-1099

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

CHRISTOPHER N. GALANOS, §

Petitioner, §

vs. §

ALEX T. HOWARD, JR., JUDGE, §

§

Respondent. §

RESPONDENT HONORABLE ALEX T. HOWARD, JR.'S REPLY BRIEF TO PETITIONER CHRISTOPHER N. GALANOS' PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF JURISDICTION

This Court should not accept jurisdiction. The Order of the Court of Appeals entered October 3, 1986, affirming without opinion the order of the United States District Court for the Southern District of Alabama, Southern Division simply affirmed a discretionary discovery ruling by the Honorable Alex T. Howard, Jr., Respondent, under Rule 26(b)(1), F.R.C.P. which states,

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the parties seeking discovery or to the claim or defense of any othe party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissable at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

STATEMENT OF THE CASE

A. Introduction to the Claims of Plaintiff William H. McGill.

This is a suit brought by William H. McGill (herein referred to as "McGill") against the City of Mobile, Mobile Police Chief Winston J. Orr, Lester Hargrove, Charles S. Summers, Bernard Henebry, Robert P. Larison, and Mobile County District Attorney Chris N. Galanos (herein referred to as Galanos). The suit is under 42 U.S.C. §§ 1983 and 1985. McGill was employed by the City Police Department as a policeman. The Defendants Orr, Hargrove, Summers, Henebry and Larison were employees of the Mobile Police Department and were involved in the dismissal of McGill from the Mobile Police Department on September 13, 1983. Galanos is the District Attorney of Mobile County.

The suit alleges that on September 7, 1983, while McGill was acting as a policeman on routine patrol for the Mobile Police Department, McGill attempted to arrest Galanos on a charge of driving an automobile under the influence of drugs which impaired his physical or mental facilities to a degree which rendered him incapable of safely driving (DUI). This is sometimes referred to as the "Incident". The suit alleges that the motivating reason McGill was fired from the Mobile Police Department was his arrest and attempt to charge Galanos with DUI. Although not a necessary allegation to the suit, Galanos' motivation for wanting McGill terminated was that he saw McGill's attempt to lodge a charge and prosecute him as a great conspiracy which he perceived at the time.

The First Cause of Action alleges that McGill's right to charge Galanos for a crime committed in his presence, including the right to sign a warrant and testify, was violated by the City of Mobile's firing of McGill. This right was protected by the First and Fourteenth Amendments to the Constitution of the United States under the right of free

speech. Under the First Amendment, McGill could not be punished or retaliated against by the Defendants for his exercise or threatened exercise of free speech. The Complaint also alleges that not only was McGill's exercise of free speech protected by the First Amendment, but McGill was also protected by various state statutes which prohibited the Defendants from obstructing justice or otherwise interfering with a police officer such as McGill in the carrying out of his duties. These statutes which are cited in the Complaint included criminal statutes prohibiting persons from criminal coercion and intimidating a witness.

McGill's attempt to exercise his right of free speech was a substantial or motivating cause of his dismissal from his public employment as a police officer. McGill claims damages under 42 U.S.C. § 1983 and also under 42 U.S.C. § 1985(2), which provides a cause of action against two or more persons who "conspire for the purpose of impeding, hindering, or obstructing, or defeating, in any manner, the due course of justice in any state . . ., with intent to deny any citizen equal protection of the laws . . ." The Complaint alleges that McGill, as a member of a class of persons within the Mobile Police Department protected by the criminal statutes cited above, was denied equal protection of the laws which permitted and even required McGill to prosecute anyone for the commission of a criminal offense in his presence. McGill alleges that the conspiracy to retaliate against McGill by the Defendants for performing his legal duties will have a chilling effect upon other members of his class within the Mobile Police Department in the exercise of their right of free speech, i.e., members of the Department who attempt to prosecute high public officials for criminal acts.

The Second Cause of Action alleges that McGill was denied a property right in his public employment without due process of law. The Third Cause of Action alleges that McGill was deprived of his liberty interest without due

process of law in that McGill was terminated for attempting to prosecute the Defendant Galanos. The Fourth Cause of Action alleges the Tort of Outrage in that the Defendants willfully, and by their extreme and outrageous conduct attempted to terminate McGill for his exercise of his constitutional right of free speech. The Fifth Cause of Action alleges an intentional tortuous interference with McGill's employment.

B. Statement of the Facts.

On the night of September 7, 1983, McGill attempted to arrest Galanos in front of Galanos' ex-wife's apartment after observing Galanos speeding while driving to the apartment, acting erratic, acting unsteady on his feet, and bracing himself on the side of the automobile while he attempted to walk alongside of his automobile. See, McGill deposition pages 40-45. McGill tried to charge Galanos with driving under the influence of alcohol or drugs or narcotics and/or falsifying information to a police officer and trying to file a false report. See, McGill deposition page 46. At the scene, McGill was prevented by some of his superiors who arrived on the scene from placing Galanos under arrest and taking him down to the docket. McGill told one of them, a Corporal Allen, that,

Galanos had falsified a police report to me, it caused me to run through town at high rates of speed to get to a hoax call, and after observing his condition that he appeared to be under the influence of narcotics and not alcohol at this time, because I got real close to him and didn't smell any alcohol, and my intentions was arresting him and placing him in jail.

See, McGill deposition pages 49-50.

At 8:00 a.m. the next morning Galanos went over to see Police Chief Winston Orr to complain about McGill and request an Internal Affairs investigation of the events of the preceding night. See, Galanos deposition page 33. Orr and Galanos discussed Galanos' filing a complaint with the Office of Internal Affairs of the Mobile Police Department which at that time was the internal investigative arm which investigated disciplinary problems and complaints against policeman. See, Orr deposition page 16. Prior to the time Galanos arrived in his office at 8:00 a.m. Orr had been informed by his assistants about the Incident the night before with Galanos and had been told that "McGill threatened to go get a warrant for him [Galanos]". See, Orr deposition page 26. They had further told him that "Billy was insistent on making an arrest." See, Orr deposition page 33.

Galanos filed a complaint with Internal Affairs and it was assigned that day to an officer by the name of Mike Rowland. Rowland went to Orr's office and explained to Orr what Galanos wanted to do and Orr told him to "get into it". See, Rowland deposition page 11.

At the time Galanos filed his complaint with Internal Affairs there werre two unrelated allegations of misconduct pending against McGill involving an incident at a K-Mart and an incident involving a conflict with a citizen by the name of Doug Hammac. These investigations had not been concluded at the time Galanos filed his complaint. See, Rowland deposition pages 12-13.

Rowland's investigation began on September 8th and was not concluded until September 12, 1983. See, Appendix A. Rowland's September 12, 1983 Letter Report to Orr. Rowland did not finish interviewing witnesses until he was writing his report on September 12, 1983. See, Rowland deposition page 18.

Despite the fact that Rowland's investigation was just

starting on September 9, 1983, McGill was hand delivered a Pre-disciplinary Action Notice on September 9, 1983 at 5:00 p.m. informing McGill that on September 10, 1983 at 5:05 p.m. (twenty-four hours later) disciplinary action was to be taken against him. See, Appendix B attached hereto. In the September 9, 1983 Pre-disciplinary Action Notice McGill's entire record with the Police Department was set out. Specifically, the Hammac and K-Mart incidents which were then being rushed to completion were referred to in the Notice. The Notice also included the Galanos Incident stating,

> On, or about September 8, 1983 Mr. Christopher Galanos, lodged a complaint for unprofessional and abusive conduct and conduct unbecoming an officer of this department.
>
> All of the complaints that have been lodged against you and specifically those complaints filed within the last two weeks as set out above, have been fully investigated by the Internal Affairs Division of this Department and as a result of those investigations, I must concur that a Pre-disciplinary Hearing should be held in the office of the Chief of Police, City of Mobile, on September 10, 1983 at 5:05 p.m. (Emphasis added.)

Rowland testified that the Notice's statement that "All of the complaints have been fully investigated by the Internal Affairs Division" was a false statement because the investigation of two of the three incidents was not completed. Rowland's report on the Galanos Incident would not be forthcoming for another three days. See, Rowland deposition page 18. Rowland testified that as of September 9th he did "not have all the information available to us at that time". See, Rowland deposition page 19. The Internal Affairs report on the K-Mart incident wasn't even written until September 13, 1983, four days later. See, Appendix D. As will be seen,

the September 10th hearing resulted in McGill being recommended for termination because of all three incidents.

By report dated September 12, 1983, Internal Affairs, through Rowland, ruled in McGill's favor. Rowland found as a fact that McGill did not improperly detain Galanos on the night of September 7, 1983. See, Rowland deposition page 31, also see Appendix A. Rowland testified "According to the procedures of the Police Department, he [McGill] acted within those procedures and guidelines within the state law". See, Rowland deposition pages 31-32. Rowland's only adverse ruling on McGill was that McGill had improperly communicated with the news media in latter defending himself from Galanos' public statements that he had been "held hostage" by McGill[1]

On the same day as Rowland's report to Orr, September 12th, Orr wrote a report to Robert B. Doyle, Jr., then the City Commissioner in charge of police matters, that all the complaints against McGill had been fully investigated, including the Galanos Incident which was specifically named, and advised him that disciplinary action had been taken against McGill on September 10th. See, Appendix C, September 12, 1983 letter from Orr to Doyle. The letter further informs Doyle that the Pre-disciplinary Hearing had been held, and that Orr recommended McGill be terminated.

By letter dated September 13, 1983, the City gave McGill his letter of termination referring to the September 10, 1983 hearing and stated that McGill's "services with the Mobile Police Department be terminated effective September 13, 1983". See, Appendix D. The Galanos Incident was conspicuously omitted from the City's letter of termination

[1]This finding is not an issue in this case as it has been settled separately by the parties.

although Orr's recommendation to Doyle to terminate McGill had included it.

Orr had admitted in his deposition at pages 62-63, that the Galanos Incident was one of the reasons that he recommended that McGill be terminated, even though it was omitted from the City's letter of termination. When asked why the Galanos Incident was in Orr's September 12, 1983 letter recommending termination, when the City was now contending that the Galanos Incident was not a reason for McGill being dismissed Orr explained at deposition page 64,

> Q. Well, just to get to the bottom line, are you telling me that it was somebody's mistake that the Galanos incident appeared in Exhibit 2?
>
> A. As an afterthought, yes, it would be, but at the time it might not have been a mistake, it might have been intentional, either by me or the legal advisor. And I didn't object to it, so it was by me.
>
> Q. A mistake by you?
>
> A. It was a mistake by me to sign that if I didn't believe in it. And I sure signed it, and it's dated.

Orr believed, and had discussed with the Defendants Larison and Henebry (other superiors of McGill within the Police Department) that it was a "bad idea" to include the Galanos Incident in McGill's termination. See, Orr deposition pages 65-66.

Orr and then former City Commissioner Gary Greenough had discussed bringing the Galanos Incident into the dismissal. Orr testified at page 73 that Greenough said, "Then you're going to turn it into a big fiasco if you try to bring the Galanos thing into the Personnel Board as the reason he got dismissed".

Between September 7th and McGill's dismissal on September 13th, McGill attempted to charge Galanos and get a warrant from the Mobile Police Department Warrant Clerk to arrest Galanos. McGill testified that he attempted to get the warrant by contacting the Warrant Clerk Effie Diamond and was refused. See, McGill deposition pages 62-63. He advised her by telephone that,

> I advised her who I was. Asked her if she would type me up a warrant, I was on my way to the police station and would take it in before the Judge. She said, I will. Wanted to know the place of occurrence and everything, wanted to know the person's named on the warrant, which I read off Christopher Nicholas Galanos' name. Place of employment, I told her the District Attorney for Mobile County. She says, I am going to have to refuse this warrant. I asked her why. She said, because of a person of his caliber and position, that you need to talk to Chief Orr before you swear out such a warrant.

See, McGill deposition page 63.

McGill further testified that he talked to Chief Orr in his effort to get the warrant. See, McGill deposition page 64. When McGill was called into Chief Orr's office the next morning, September 8, 1983, McGill was forcefully instructed to keep quiet and do nothing. He described the scene with Orr,

> Well, as soon as I walked in the office, before I was even asked to sit down or whatever, he asked me, he says, did you talk to the Attorney General about Chris Galanos. I said, no sir, I have not. He says, have you drawn a warrant anywhere on Chris Galanos. I said no, sir, I have not. And then in a belligerant, obnoxious manner he says and

pointing his finger, don't. (Emphasis added.)

See, McGill deposition pages 69-70.

Rowland's investigation verified that McGill had tried to get a warrant for Galanos but could not. See, Rowland deposition pages 71, 26. Sergeant Jim West, Rowland's superior, testified there was no justification for refusing McGill's request to get a warrant. He testified at pages 30-31.

> Q. Well, let's assume that Billy McGill saw Chris Galanos and in Billy's opinion, he was guilty of D.U.I. and Billy tried to go down to the clerk's office — the warrant clerk's office to get a warrant for his arrest, is there any justification in your opinion for not allowing him to get that warrant?
>
> MR. ROSSLER:
>
> Object to the form of the question.
>
> A. No.

Rowland testified that the reason he did not ask Galanos about whether or not Galanos used drugs and whether or not he was under the influence of drugs on the night of September 7, 1983 was because "I knew he took those drugs". See, Rowland deposition page 77.

Rowland testified that while he was investigating the Galanos Incident for Internal Affairs, "pressure" was put upon him by Orr and Galanos to sustain the complaint against McGill. See, Rowland deposition page 36. Rowland testified that the pressure was "basically because of the political ramifications of what had happened and the political air that was going on within the Police Department at the time" (Emphasis added). See, Rowland deposition page 37. Rowland continued at page 37.

A. There was at least one other investigation going on within the Police — not within the Police Department, but within the City, specifically the auditorium investigation, which involved a City Commissioner, which brought some — some — I want to say bad politics into the Police Department through the — some allegations that some police officers had assisted the Commissioner in specifically breaking into the District Attorney's house, possibly bugging his telephone, and that sort of thing.

Galanos was paranoid about McGill trying to arrest and prosecute him, feeling that McGill was part of a conspiracy to discredit Galanos. Rowland testified at page 38,

Galanos felt that this particular incident was part of the conspiracy to discredit him, and he was concerned about that. I think — you know, my knowledge of what was going on would indicate that some of the pressure — that there was pressure coming from within the department to sustain this complaint.

Q. Okay. Who specifically within the Police Department was applying the pressure to sustain the complaint?

A. Basically the Chief wanted it sustained. (Emphasis added.)

At page 80, Rowland testified,

Q. Do you think he [Galanos] felt that Billy McGill was part of this great conspiracy to get him and, therefore, Billy ought to be terminated off the Police Department.

A. He thought that. (Emphasis added.)

There is direct evidence from Rowland that Galanos was the one who caused the City to terminate McGill. At page 58, Rowland testified,

> Q. Did Galanos ever make a direct statement to you or in your presence that he wanted Billy Mcgill terminated or disciplined?
>
> A. Yes, sir, he did.

Rowland testified that Galanos was "fairly emphatic" about it. See, Rowland deposition page 58. He further acknowledged that Chief Orr was the only one at the Police Department who had enough influence to cause McGill to be dismissed. See, Rowland deposition page 50. That is exactly the person that Galanos went to see the morning after the Incident. Galanos didn't merely file an Internal Affairs complaint. He went to Orr the day after he was arrested with the intent to get McGill terminated and the resulting decision to terminate McGill was made on September 8, 1983. Rowland described his conversation with Chief Orr about what Galanos told Chief Orr he (Galanos) wanted. At page 67 Rowland testified,

> Q. All right, sir. And what was it that the Chief told you regarding that?
>
> A. Basically the Chief told me that Chris wanted McGill fired. (Emphasis added.)

The follow-up Internal Affairs investigation and the September 13, 1983 dismissal letter was simply window dressing to polish up a decision that had already been made. Once McGill was terminated, he was effectively neutralized from saying anything or pursuing the matter in Court.

Not only is it obvious from the above that the Galanos Incident was the main reason that McGill was terminated, and that the motive for the termination was that Galanos was paranoid about McGill being part of some great conspiracy perceived by Galanos, but that the whole termination was a subterfuge made to look like the Galanos Incident had nothing to do with the termination. The truth is that the Galanos Incident was the main motivating cause.

The evidence further shows that Orr and his underlings participated in a conspiracy with Galanos by trying to influence Mike Rowland of Internal Affairs to make findings which Rowland did not believe were correct. Rowland testified at page 39, that Orr wanted the Galanos' complaint sustained explaining,

> A. He [Orr] — he had told me at one point — I don't know whether he told anyone else, but I know he had told me at one point that he felt like Billy was tied someway with Greenough, that they were friends, he knew they were friends, at one point. And that since Greenough was in so much trouble at the time, that he had probably planted it into Billy's head that if he ever got the opportunity, you know, to stop Galanos or to do something to him or whatever else, and felt like there was some justification in that.
>
> Q. And would that be — did he make the comment to you when you started your investigation?
>
> A. Yes. (Emphasis added.)

It was further Rowland's opinion that McGill should not have been dismissed from the Police Department. Rowland testified that McGill was dismissed because that was what Galanos wanted to happen and Galanos had enough influence with the Police Department to have McGill

dismissed even though Rowland did not think he should be. See, Rowland deposition pages 49-50.

Apparently because McGill's termination as of September 13, 1983, was so obviously motivated by the Galanos Incident, the City attempted to clean up their act by giving McGill a second disciplinary hearing and refiring McGill by letter dated October 18, 1983. See, Appendix E attached hereto. This termination refers to the K-Mart and Hammac incidents and substitutes a new charge dated April 15, 1983 which had not previously been mentioned. The Galanos Incident was nowhere mentioned in the second termination. However, the truth surfaced in a letter Greenough wrote. Commissioner Greenough did not sign the second termination letter because he felt it was clear McGill was being terminated because of the Galanos Incident. Greenough wrote to Commissioners Doyle and Mims on October 18, 1983 (see Appendix F attached hereto) "After having carefully reviewed the reports and information concerning Officer William H. McGill, it is apparent that the incident which led to his termination was the [Galanos] incident which occurred on September 7, 1983." (Emphasis added.) Greenough further stated that he could not sign the October 18th termination letter because of this reason.

Rowland testified that the second, October 18th, termination was because of "some mistakes in the first termination, and they [the City] were attempting to clear those up with the second termination." See, Rowland deposition page 51.

Ultimately, a Mobile County Special Grand Jury completely vindicated McGill's position. By Grand Jury Report of October 26, 1983, (see Appendix G attached hereto) the Grand Jury (1) indicted Galanos on the DUI charge — the same charge McGill tried to arrest him for, (2) found no evidence to support Galanos' charge that there was "any conspiracy to discredit Mr. Galanos in order to hinder any

investigation that he may have had in progress", and (3) reported "Finally the Grand Jury found no evidence to support the charge that Officer Billy McGill violated Alabama Code, Title 36-10-5 which prohibits the unlawful detention of another under color of officer (sic)."

Galanos' criminal DUI case was settled December 2, 1983 with the State dismissing the DUI case and Galanos agreeing to "take a leave of absence for medical reasons" (Emphasis added). See, Galanos deposition page 59.

Compounding the fact that Galanos used his personal influence as a District Attorney to get McGill fired, Galanos improperly obtained McGill's Internal Affairs file from Mike Rowland during the termination proceedings. Orr testified that Galanos knew that the Internal Affairs files were not available to the District Attorney because the purpose of the Internal Affairs investigations was to encourage officers to voluntarily make statements to Internal Affairs. With regard to the acquisition of McGill's disciplinary file by Galanos, Orr testified, "So what I am saying is, it's not ethical. Galanos knows it not ethical." (Emphasis added.) See, Orr deposition pages 88-89. Orr testified that the file was "confidential between him [Orr] and that the investigator and the Chief of Police." See, Orr deposition page 90. Orr testified that he had a firm understanding with Galanos as Chief of Police that Galanos did not have access to the Internal Affairs files contrary to the written policy of the Mobile Police Department. See, Orr deposition page 90.

Rowland's recollection of the file acquisition was that Galanos asked him for Billy McGill's Internal Affairs file and Rowland told Galanos that he could not give him the file because "I felt like I could be held in some either civil or maybe criminal position for being — you know, for releasing that information without the authority of the Chief". (Emphasis added.) See, Rowland deposition page 54. After that Rowland was in Orr's office and Orr told him to give

Galanos a copy of the file. See, Rowland deposition pages 55-56.

ARGUMENT

Galanos first argues that he did not inject his mental state as an issue in this case and, therefore, McGill should not be allowed to take the deposition of Dr. Rudder, Galanos' psychiatrist who treated him for drug dependency. The District Court has already rejected the relevancy argument and certainly the trial judge has discretion in such matters. The test under Rule 26 F.R.C.P. is not relevancy but whether or not the evidence sought could lead to the discovery of admissible evidence. McGill notes that it was Galanos himself who was driving under the influence of drugs on the night of September 7, 1983. The fact that sufficient evidence of this exists is proven by the fact that a Mobile County Grand Jury indicted Galanos on the same charge that McGill was trying to arrest him for. Galanos' DUI case ended with a deal struck between the State of Alabama and Galanos, whereby Galanos agreed to get "medical" attention for his drug habit in exchange for the dismissal of the charge made by the Grand Jury. Rowland was so sure that Galanos was using drugs on the night in question that he did not even ask Galanos in his interview as to whether or not he was using drugs because "I knew he took those drugs." See, Rowland deposition page 77. It is certainly relevant to Rowland and helpful to McGill's case that he was rightly attempting to tell the proper authorities, arrest and prosecute Galanos on the DUI charge. It is also relevant and helpful to McGill's case that Galanos was in fact guilty of using drugs on the night in question. His attempt to hide this drug usage by causing McGill to be terminated from the police force shows the wrongfulness of his conduct as well as the maliciousness of his intent. Galanos' malicious intent would be extremely pertinent to the punitive damage aspect of the case. Punitive damages can be recovered from individual

defendants under § 1983.

Even though Rule 26 makes the test not relevancy but, whether or not the information sought would lead to the discovery of admissible evidence, and even though the discovery rulings are generally discretionary with the District Court, the District Court in a well reasoned opinion (see, Petitioner's Appendix D, Page 32-A) ruled in favor of McGill on the question of relevancy under Rule 501. Fed.R.Evid. Rule 501 provides,

> [t]he privilege of a witness, person, government, state, or political subdivision thereof shall be governed by the principles of the common laws as they may be interpreted by the courts of the United States in the light of reason and experience.

Thus, principles of common law as they are interpreted by the courts of the United States are controlling. Therefore, as the District Court noted "Privilege, therefore, is governed by the first sentence of Rule 501, Fed.R.Evid., which makes privilege a matter of federal common law." The District Court correctly found that the second sentence of Rule 501 cited by the Petitioner Galanos is not applicable and therefore Alabama's privilege rules do not control. Galanos' Petition does not seek to explain why the second sentence of Rule 501 applies, but simply argues vague principles of constitutional rights of privacy and claims of congressional recognition of the necessity of confidentiality for chemically dependent people.

As noted by the District Court, federal courts have generally been restrictive as to "recognizing testimonial privileges. See, Trammel v. United States, 445 U.S. 40 (1980), and American Civil Liberties Union of Miss. v. Finch, 638 F.2d 1336 (5th Cir. 1981). Federal common law does not even recognize the general physician/patient privilege. See, United States v. Lindstrom, 698 F.2d 1154 (11th Cir. 1983).

As the District Court correctly reasoned the claimed privilege is akin to that which would have been recognized in the proposed evidence Rule 504 which was not enacted by Congress and the majority of federal decisions reject the "psychotherapists privilege" which would have been created by proposed Rule 504. See, In Re: Doe, 711 F.2d 1187 (2nd Cir. 1983).

This Court has not recognized a constitutional right to privacy and the fact that there is a quasi federal regulatory privilege for persons seeking treatment for drug and alcohol abuse as cited at page 6 of Respondent's Petition certainly does not give rise to the creation of a new constitutional right.

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari should be denied because (1) Dr. Rudder's testimony is relevant to the case, and (2) Galanos has not presented any federally recognized privilege which would protect the psychiatrists' testimony and records.

Dated this 29th day of April, 1987.

Respectfully submitted,

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Attorney for Respondent

CERTIFICATE OF SERVICE

I, Vincent F. Kilborn, attorney for the Respondent in the above entitled case, hereby certify that I have on this the 29th day of April, 1987, served a copy of the foregoing brief upon counsel for all parties to this proceeding by depositing a copy thereof in the United States mail, properly addressed and first class postage prepaid to:

Davis Carr, Esq.
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VINCENT F. KILBORN

APPENDIX

APPENDIX "A"

CITY OF MOBILE

MOBILE, ALABAMA

COMMISSIONER

September 12, 1983

PLEASE ADDRESS REPLY TO

Winston J. Orr
Chief of Police
Mobile Police Department
Mobile, Alabama 36602

Dear Sir:

On September 8, 1983, the Office of Internal Affairs was contacted, through your office, by the District Attorney of Mobile County, the Honorable Chris N. Galanos, in reference to allegations of misconduce involving Officer William McGill. The charges alledged by Mr. Galanos stemmed from an incident which occurred on the evening of September 7, 1983, when Mr. Galanos had occasion to be given a police escort by Officer McGill and was subsequently detained by the officer for Driving Under the Influence of Alcohol (DUI). After arriving at their destination, Mr. Galanos contends that he was illegally detained for a period of almost two (2) hours while confined to the back seat of a police vehicle and was not allowed to attend to his family emergency. Galanos also states that after being released from the police car, he was refused a Photo-electric Intoximeter (PEI) test and was further humiliated by being forced to allow Sergeant Obie Singletary to drive him home.

A thorough investigation has been conducted into this matter and the results are now complete. A summary of the incident in question is as follows.

On September 7, 1983, at approximately 10:30 P.M., Mr. Galanos talked by phone to his ex-wife, Gwen, from the residence of his parents, Mr. and Mrs. Nick Galanos, located at 5717 Knight Court, in the Regency subdivision. Mrs. Gwen Galanos lives at 2004-C Porter Court in the D'Iberville Apartments, in the area of Springhill Avenue and Stanton Road. During the conversation, Mrs. Galanos related to her ex-husband that their child, a three year old white female, had gotten lost while shopping at Bel Air Mall and that she had found the little girl, but that both she and her daughter were extremely upset. Mr. Galanos told his ex-wife that if she needed him, he could be reached by calling his pager number. A few minutes later, Gwen called Mr. Galanos on his pager and excitedly requested that he "come quick". As a result, Mr. Galanos got in his car, a silver Toyota station wagon, and proceeded to his ex-wife's apartment.

Upon turning east on Airport Boulevard from the Regency subdivision, Galanos noticed a police car in the parking lot of a doctor's office, which is located on the north side of the intersection. In an attempt to draw attention to himself and, hopefully obtain a police escort, Galanos put his blue emergency light on the

EXHIBIT "A"

BEST AVAIL

roof of his car and turned it on, then continued eastbound on Airport Boulevard.

When Mr. Galanos approached the intersection of Airport and Downsview Boulevard, he was spotted by Officer William McGill, who was in car 134. Officer McGill, who was in the parking lot of the Max Club, gave pursuit to determine who was operating a plain vehicle with a blue emergency light. At the intersection of Airport and Windsor Place, in front of the Airport Twin Cinema, Officer McGill turned on his blue lights and stopped Mr. Galanos. Upon recognizing him, McGill asked, "Is anything wrong?" Galanos replied that he had an emergency at his wife's house and gave directions to Officer McGill. The officer then instructed Galanos to follow him and proceeded to contact police communications by radio and advise the operator that he was conducting an escort.

Mr. Galanos had instructed Officer McGill to take the route of Dauphin Street to Upham Street, then Upham to Springhill Avenue, then east on Springhill to DeSales Avenue. As Officer McGill reached Upham Street, he missed the turn and was forced to continue on to Fulton Street and make the block back to Upham. Galanos, however, made the turn at Upham and continued on until McGill caught up with him just south of Springhill Avenue. Radio traffic, at about this time, shows that McGill called for Corporal Albert Allen, car 135, to come to Dauphin and Upham Street, but he did not specify why he called for the meeting. As Corporal Allen turned south on Upham from Springhill, he observed Galanos drive past him with Officer McGill following. The two vehicles turned east on Springhill and proceeded to turn north on DeSales Avenue. Corporal Allen turned around and gave chase.

When Mr. Galanos and Officer McGill arrived at their destination on Portier Court, Mr. Galanos exited his car and turned to thank Officer McGill for his assistance. At this point, McGill states he saw Mr. Galanos "stagger and fall" and suspected that it was possible that Mr. Galanos was intoxicated. He, therefore, asked Mr. Galanos to get in the back of his police car. Within seconds, Corporal Allen arrived on the scene.

Galanos agreed to submit to anything Officer McGill requested of him, but asked the officer to first allow him to check on the status of his ex-wife and child. McGill refused and Mr. Galanos got into Officer McGill's car. Upon conferring with Officer McGill, Corporal Allen suggested that a supervisor be called to the scene and then went to a pay phone, located at Springhill and Stanton Road, and called the precinct. Corporal Allen instructed Lieutenant Holifield as to the circumstances and requested his assistance.

After returning to the scene, the officers approached the residence of Mrs. Galanos and inquired as to whether she had an emergency. She stated that she did not. On questioning by the officer, Mrs. Galanos says that she responded in that way because she felt that her family problems were not a police matter, but upon reflection, had she known that Mr. Galanos was in the police car, she would have told the officers of her real emergency.

Mrs. Galanos [illegible] Officer McGill [illegible]

ABLE COPY

blood, why were the tests not given? Surely, this would have either strengthened Officer McGill's case or it would have cleared Mr. Galanos undeniably.

Thirdly, (and this question has been asked by both the officer and Mr. Galanos), if Lieutenant Holifield did not believe that Galanos was intoxicated, why was he not allowed to attend to his personal business on Portier Court and then drive himself home?

In his statement to Internal Affairs, Officer McGill contends that he followed police policy and procedure in respect to his actions in this case. He asserts that he maintained control of the situation until supervisors arrived and that upon their arrival, the arrest or release of Mr. Galanos became the responsibility of those individuals. In this case, Officer McGill's contention seems to be true. However, there is no profound basis, in this case, to believe that Mr. Galanos was either intoxicated or on medication. This can be confirmed by the statements of the other officers on the scene. Therefore, due to the complexity of this case and the obviously open-cooperation of Mr. Galanos, it appears that the allegation made by Officer McGill as to the sobriety of Mr. Galanos is simply a bad judgment call on the part of the officer.

Due to Officer McGill's misinterpretation of the sobriety of Mr. Galanos, it would be logical to conclude that Mr. Galanos was improperly detained and prevented from attending to his personal emergency as he alleges in his complaint.

It is obvious that a case involving a citizen of such local prominence as the district attorney would be of interest to the news media and the people of this city. To further complicate this matter, Officer McGill has given numerous interviews and statements regarding this case to all three factions of the media (television, radio, and newspapers). This is clearly and blatantly a violation of the Mobile Police Department Rules of Conduct, Section 1.30 concerning public statements and appearances. The nature of Officer McGill's statements and certain accusations which he has lodged against both Mr. Galanos and the police department in regard to this case has, without doubt, cast a shadow of disrepute on the principals in this case, including the department itself and thereby has served only to erode public confidence in the integrity of this department and its members.

Considering all facts pertinent to this case, numerous violations of departmental rules and regulations can be noted. Specifically, these are:

(1) 1.01- Violation of rules
Officers shall not commit any acts which constitute a violation of any rule, regulation or directive of the department.

(2) 1.02 - Unbecoming Conduct
Officers shall conduct themselves in such a manner as to reflect most favorably on the department.

(3) 1.43 - Public statements and appearances

BEST AVAI

(A) Officers shall not publicly criticize or ridicule the department.

(B) Officers shall not address public gatherings, appear on radio or television, prepare articles for publication, or release investigative information...

(4) 1.37 - Dissemination of information

Officers shall treat the official business of the department as confidential.

As a result of this investigation and consideration of all the facts previously listed, the Office of Internal Affairs will carry this complaint against Officer McGill as sustained.

As usual, our files in this matter are available for your inspection and/or review.

Respectfully,

Mike Rowland, Corporal
Internal Affairs Division

MR/pes

ABLE COPY

APPENDIX "B"
PRE-DISCIPLINARY ACTION NOTICE

TO: William H. McGill
(Name of Employee)

FROM: Winston J. Orr, Chief of Police
(Appointing Authority)

SUBJECT: Dismissal
(Contemplated Disciplinary Action)

You are hereby advised that disciplinary action is contemplated against you for the following reason(s):

Your supervisors inform me that your record of performance with the Police Department in the past several years warrant you being terminated. From July 6, 1971, your employment date, to the present time, which is September 9, 1983, during this time, you have shown a marked deficiency in the characteristics and traits needed to function as a Police Officer. The following is a chronological order of events which bear out their observations and conclusions:

Accidents involving police cars:

5-07-72 - Worked three off days and reprimand
1-15-80 - Written reprimand
1-21-80 - Written reprimand

Incidents involving your conduct:

7-17-83 - Drinking off duty at High Chapperal (shot WM)
(cont'd)

You are further advised that on September 10, 1983 at 5:05 P.M.
(Date) (Time)
in the office of the undersigned, you will be allowed to respond orally or in writing to the above charges if you so desire. You are not required to make any statement at this interview if you do not desire to respond. You are not entitled to an adversary hearing at this time before the undersigned. Should you be disciplined, you have a right of appeal as granted by the Rules of the Personnel Board.

Winston J. Orr
Signature of Responsible Official

CERTIFICATE OF SERVICE

A copy of the foregoing was delivered to the above named employee on
9/9/83 (Date) at 5:00 PM. (Time).

Signature of Deliverer

EXHIBIT "B"

9-30-80 - Drunk in Possession of City Vehicle - Insubordination to Lt. Hair and Sgt. Parks.

4-15-83 - Unprofessional abusive conduct - Officer Tommy Menton.
4-15-83 - Insubordination - Sgt. Wayne Farmer.
8-26-83 - Unprofessional abusive conduct - K-Mart, Officer W. C. Garrick.
8-30-83 - Unprofessional abusive conduct - First National Bank , Overlook, Officer Robert R. Smith.
8-30-83 - Failure to complete proper reports.
8-30-83 - Failure to process automobile involved in incident.

Total sick time taken in past year:

34 days plus three weeks absent without pay.

202's which are disciplinary warnings by Police Department:

3-13-72 - Failed to attend court.
7-20-72 - Failed to attend court.
5-31-72 - Failed to attend court.
4-03-73 - Failed to turn in required reports.
4-30-73 - Failed to attend court.
5-14-76 - Failed to give address for department files.
5-12-77 - Failed to answer radio.
4-27-79 - Failed to answer radio.
10-15-80 - Failed to answer radio.
2-13-81 - Failed to answer radio.
5-12-81 - Sick
10-02-81 - Failed to answer radio.
10-14-82 - Failed to answer radio.
3-11-83 - Violation of lawful order.
4-22-83 - Sick.
4-24-83 - Sick.
7-09-83 - Sick.
7-20-83 - Sick.
7-29-83 - Sick.
7-20-83 - Oral reprimand - Failure to comply with order.
8-17-83 - Sick.

Suspensions:

8-15-72 - Failed to submit forms - AWOL, five days.
5-01-73 - Failed to answer complaint, three days.
9-19-77 - Failed to attend court, three days.
10-06-77 - Drunk, off duty, ten days, fired city shotgun at club.
11-03-77 - Drunk on duty, ten days.
8-01-79 - Disobeyed lawful and reasonable order, three days.
7-25-82 - Insubordination, ten days.

(Cont'd.)

A formal recommendation has been made, to this office, by Charles S. Summers, Captain, Patrol Division, that your employment with this department be terminated. That recommendation has specifically set out all those incidents set out herein above. Major Bernard Menebry Field Operations Bureau and Robert P. Larison, Assistant Chief of Police have both concurred in that recommendation.

The specific items set out above denote a violation of the following articles of the Mobile Police Department Rules of Conduct:

1.01 - Violation of rules.
1.02 - Unbecoming conduct.
1.05 - Reporting for duty.
1.06 - Neglect of duty.
1.09 - Leaving Duty Post.
1.11 - Unsatisfactory performance of duties.
1.15 - Use of alcohol on duty.
1.16 - Use of alcohol off duty.
1.18 - Insubordination.
1.24 - Citizen complaints.
1.25 - Courtesy.
1.39 - Departmental reports.
1.41 - Abuse of process.
1.48 - Treatment of persons in custody.

The specific items set out above also denote a violation Rule 14.2, (a), (c), (d) as to disorderly conduct, (g), (h), (i), (j), (l) and (m).

Specific complaints have been lodged against you upon three separate incidents within the last two weeks. Specifically, these involve a complaint of unprofessional and abusive conduct lodged against you on 8-26-83 and 8-30-83. They also include your failure to complete proper reports and failure to properly process an automobile involved in said incidents, both on 8-30-83. On, or about September 8, 1983, Mr. Christopher Galanos, lodged a complaint against you for unprofessional and abusive conduct and conduct unbecoming an officer of this department.

All of the complaints that have been lodged against you and specifically those complaints filed within the last two weeks, as set out above, have fully investigated by the Internal Affairs Division of this department and as a result of those investigations, I must concur that a pre-disciplinary hearing should be held and hereby inform you that such a hearing will be held in the office of the Chief of Police, City of Mobile, on September 10, 1983, at 5:05 P.M. You are requested to appear at hat time.

APPENDIX "C"

Winston J. Orr
Chief of Police

51 Government Street
Mobile, Alabama 36602

Police Department

September 12, 1983

FOR IDENTIFICATION
DATE 2/13/85 EX 2
LRD

Hon. Robert B. Doyle, Jr.
Mayor-Commissioner of Public Safety
City of Mobile
Mobile, Alabama

RE: OFFICER WILLIAM H. McGILL

Dear Sir:

I wish to advise you that disciplinary action has been taken against the above captioned officer of this department. This officer's Division Commander, Captain Charles S. Summers, has recommended to this office that said officer's employment with this department be terminated. Upon his recommendation, and the concurrence of Major Bernard Henebry and Assistant Chief Robert Larison, I have held, in accordance with the Rules and Policies of this department, and the Rules and Laws of the Personnel Board for Mobile County, a pre-disciplinary hearing.

At approximately 5:05 P.M., this date, a pre-disciplinary hearing was held in this office in order to give this employee an opportunity to respond to charges upon which disciplinary action was contemplated. At the conclusion of this pre-disciplinary hearing, and upon further consideration, I find that I must concur in the recommendation of my staff that Officer William H. McGill's employment with this department be terminated, effective September 12, 1983.

Find enclosed a copy of the pre-disciplinary action notice that was served upon Officer McGill. This notice fully and specifically sets out the detailed charges upon which I made my decision to terminate Officer McGill's employment. The specific items set out therein denote violation of the following articles of the Mobile Police Department's Rules of Conduct:

1.01 - Violation of rules
1.02 - Unbecoming conduct
1.05 - Reporting for duty
1.06 - Neglect of duty
1.09 - Leaving duty post

EXHIBIT "C"

1.11 - Unsatisfactory performance of duties
1.15 - Use of alcohol on duty
1.16 - Use of alcohol off duty
1.18 - Insubordination
1.24 - Citizen complaints
1.25 - Courtesy
1.39 - Departmental reports
1.41 - Abuse of process
1.48 - Treatment of persons in custody

The specific charges also denote a violation of the Laws and Rules of the Mobile County Personnel Board, specifically, Rule 14.2 (a) absence without leave; (c) conduct unbecoming an employee in the public service; (d) disorderly conduct; (g) incompetency or inefficiency; (h) insubordination; (i) intoxication while on duty or public intoxication while off duty; (j) neglect of duty; (l) violation of any lawful or reasonable regulation or order made and given by a superior officer, and (m) willful violation of any of the provisions of the Act or these Rules.

Specific complaints have been lodged against Officer McGill, upon three separate incidents within the last two weeks. Specifically, these involve a complaint of unprofessional and abusive conduct lodged against him on August 26, 1983 and August 30, 1983. They also include Officer McGill's failure to complete proper reports and failure to properly process an automobile involved in said incidents, both on August 30, 1983. On, or about September 8, 1983, Mr. Chris Galanos, lodged a complaint against Officer McGill for unprofessional and abusive conduct and conduct unbecoming an officer of this department. All of the complaints that have been lodged against Officer McGill, specifically those complaints filed within the last two weeks, as set out above, have been fully investigated by the Internal Affairs Division, of this department.

Your immediate attention to this matter is requested.

Sincerely,

Winston J. Orr
Chief of Police

WJO/gmw

Att.

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

APPENDIX "D"

CITY OF MOBILE

MOBILE, ALABAMA

COMMISSIONERS
GARY A. GREENOUGH
ROBERT D. EDDLE JR.
LAWRENCE C. MIMS

PLEASE ADDRESS REPLY TO P. O. Box 1527
Mobile, Alabama

September 13, 1983

Officer William M. McGill
Mobile Police Department

Dear Officer McGill:

On Saturday, September 10, 1983, a pre-disciplinary hearing was held in the Office of the Chief of Police. It was recommended by your supervisors, and concurred in by this Board, that your services with the Mobile Police Department be terminated effective September 13, 1983.

Your termination is a result of violation of the following Mobile Police Department Rules of Conduct:

1.01 - Violation of rules
1.02 - Unbecoming conduct
1.05 - Reporting for duty
1.06 - Neglect of duty
1.09 - Leaving duty post
1.11 - Unsatisfactory performance of duties
1.15 - Use of alcohol on duty
1.16 - Use of alcohol off duty
1.18 - Insubordination
1.24 - Citizen complaints
1.25 - Courtesy
1.39 - Departmental reports
1.41 - Abuse of process
1.48 - Treatment of persons in custody

Specific complaints have been lodged against you upon three separate incidents, within the last two weeks. Specifically, these involve a complaint of unprofessional and abusive conduct lodged against you on August 26, 1983, and August 30, 1983. They also include your failure to complete proper reports and failure to properly process an automobile involved in said incidents, both on August 26, 1983 and August 30, 1983. All of the complaints that have been lodged against you, and specifically those complaints filed within the last two weeks,

EXHIBIT "D"

as set out previously, have been fully investigated by the Internal Affairs Division of the Mobile Police Department.

Your termination is also a result of the violation of the corresponding laws and rules of the Personnel Board for Mobile County:

Rule 14.2 (a) absence without leave; (c) conduct unbecoming an employee in the public service; (d) disorderly conduct; (g) incompetency or inefficiency; (h) insubordination; (i) intoxication while on duty or public intoxication while off duty; (j) neglect of duty; (l) violation of any lawful or reasonable regulation or order made and given by a superior officer, and (m) willful violation of any of the provisions of the Act or these rules, of the Laws and Rules of the Personnel Board for Mobile County.

Sincerely,

Mayor

Commissioner

Commissioner

gmw

Att.

cc: Mr. Bernard M. Richardson, Jr.
Chief Winston J. Orr
Mrs. Elizabeth Batton
Legal
Payroll
Budget

PRE-DISCIPLINARY ACTION NOTICE

TO: William H. McGill
(Name of Employee)

FROM: Winston J. Orr, Chief of Police
(Appointing Authority)

SUBJECT: Dismissal
(Contemplated Disciplinary Action)

You are hereby advised that disciplinary action is contemplated against you for the following reason(s):

Your supervisors inform me that your record of performance with the Police Department in the past several years warrant you being terminated. From July 6, 1971, your employment date, to the present time, which is September 9, 1983, during this time, you have shown a marked deficiency in the characteristics and traits needed to function as a Police Officer. The following is a chronological order of events which bear out their observations and conclusions:

Accidents involving police cars:

5-07-72 - Worked three off days and reprimand
1-15-80 - Written reprimand
1-21-80 - Written reprimand

Incidents involving your conduct:

7-17-83 - Drinking off duty at High Chapperal (shot WM)
(cont'd)

You are further advised that on September 10, 1983 (Date) at 5:05 P.M. (Time) in the office of the undersigned, you will be allowed to respond orally or in writing to the above charges if you so desire. You are not required to make any statement at this interview if you do not desire to respond. You are not entitled to an adversary hearing at this time before the undersigned. Should you be disciplined, you have a right of appeal as granted by the Rules of the Personnel Board.

Winston J. Orr
Signature of Responsible Official

CERTIFICATE OF SERVICE

A copy of the foregoing was delivered to the above named employee on 9/9/83 (Date) at 5:00 PM (Time).

Signature of Deliverer

9-30-80 - Drunk in Possession of City Vehicle - Insubordination to Lt. Mair and Sgt. Parks.

4-15-83 - Unprofessional abusive conduct - Officer Tommy Menton.
4-15-83 - Insubordination - Sgt. Wayne Farmer.
8-26-83 - Unprofessional abusive conduct - K-Mart, Officer W. C. Garrick.
8-30-83 - Unprofessional abusive conduct - First National Bank , Overlook, Officer Robert R. Smith.
8-30-83 - Failure to complete proper reports.
8-30-83 - Failure to process automobile involved in incident.

Total sick time taken in past year:

34 days plus three weeks absent without pay.

202's which are discipinary warnings by Police Department:

3-13-72 - Failed to attend court.
7-20-72 - Failed to attend court.
5-31-72 - Failed to attend court.
4-03-73 - Failed to turn in required reports.
4-30-73 - Failed to attend court.
5-14-76 - Failed to give address for department files.
5-12-77 - Failed to answer radio.
4-27-79 - Failed to answer radio.
10-15-80 - Failed to answer radio.
2-13-81 - Failed to answer radio.
5-12-81 - Sick
10-02-81 - Failed to answer radio.
10-14-82 - Failed to answer radio.
3-11-83 - Violation of lawful order.
4-22-83 - Sick.
4-24-83 - Sick.
7-09-83 - Sick.
7-20-83 - Sick.
7-29-83 - Sick.
7-20-83 - Oral reprimand - Failure to comply with order.
8-17-83 - Sick.

Suspensions:

8-15-72 - Failed to submit forms - AWOL, five days.
5-01-73 - Failed to answer complaint, three days.
9-19-77 - Failed to attend court, three days.
10-06-77 - Drunk, off duty, ten days, fired city shotgun at club.
11-03-77 - Drunk on duty, ten days.
8-01-79 - Disobeyed lawful and reasonable order, three days.
7-25-82 - Insubordination, ten days.

(Cont'd.)

A formal recommendation has been made, to this office, by Charles S. Summers, Captain, Patrol Division, that your employment with this department be terminated. That recommendation has specifically set out all those incidents set out herein above. Major Bernard Henebry Field Operations Bureau and Robert P. Larison, Assistant Chief of Police have both concurred in that recommendation.

The specific items set out above denote a violation of the following articles of the Mobile Police Department Rules of Conduct:

1.01 - Violation of rules.
1.02 - Unbecoming conduct.
1.05 - Reporting for duty.
1.06 - Neglect of duty.
1.09 - Leaving Duty Post.
1.11 - Unsatisfactory performance of duties.
1.15 - Use of alcohol on duty.
1.16 - Use of alcohol off duty.
1.18 - Insubordination.
1.24 - Citizen complaints.
1.25 - Courtesy.
1.39 - Departmental reports.
1.41 - Abuse of process.
1.48 - Treatment of persons in custody.

The specific items set out above also denote a violation Rule 14.2, (a), (c), (d) as to disorderly conduct, (g), (h), (i), (j), (l) and (m).

Specific complaints have been lodged against you upon three separate incidents within the last two weeks. Specifically, these involve a complaint of unprofessional and abusive conduct lodged against you on 8-26-83 and 8-30-83. They also include your failure to complete proper reports and failure to properly process an automobile involved in said incidents, both on 8-30-83. On, or about September 8, 1983, Mr. Christopher Galanos, lodged a complaint against you for unprofessional and abusive conduct and conduct unbecoming an officer of this department.

All of the complaints that have been lodged against you and specifically those complaints filed within the last two weeks, as set out above, have fully investigated by the Internal Affairs Division of this department and as a result of those investigations, I must concur that a pre-disciplinary hearing should be held and hereby inform you that such a hearing will be held in the office of the Chief of Police, City of Mobile, on September 10, 1983, at 5:05 P.M. You are requested to appear at that time.

APPENDIX "E"

CITY OF MOBILE

MOBILE, ALABAMA

COMMISSIONERS

GARY A. GREENOUGH

ROBERT B. COYLE, JR.

LAMBERT C. MIMS

PLEASE ADDRESS REPLY TO P. O. Box 1827
Mobile, AL 36633-1627

October 18, 1983

Mr. William H. McGill
2620 Longleaf Drive
Mobile, Al 36609

Dear Mr. McGill:

This is to advise you of the disciplinary action taken this date by the Board of Commissioners of the City of Mobile, Alabama. You are advised that your employment with the City of Mobile Police Department is terminated this date.

The reasons for your termination are that you have violated the various Laws and Rules of the Mobile County Personnel Board, and the Rules and Regulations of the Mobile Police Department as set forth in the Pre-Disciplinary Action Notice. A copy of this Notice is attached hereto and incorporated herein as though set forth in full.

The Board of Commissioners designated a Hearing Officer to conduct the Pre-Disciplinary Hearing and said hearing was held on October 11, 1983. We are advised that you were represented by legal counsel and were given full opportunity to respond to the allegations as contained in the Pre-Disciplinary Action Notice. We have reviewed the factual findings made by the Hearing Officer, and based upon our review of these facts, find that you have violated each of the rules as set forth in the Pre-Disciplinary Action Notice.

You are furthermore advised that your termination is not predicated in any part upon your action on the evening of September 7, 1983 when you were involved in an incident with the District Attorney for Mobile County, Honorable Chris Galanos; but, the action taken by the Board of Commissioners is based wholly upon the finding that you have violated the various Laws and Rules of the Mobile County Personnel Board and the Rules and Regulations of the Mobile Police Department, by your actions of April 15, 1983; August 26 and 30, 1983; and September 9, 10 and 11, 1983.

EXHIBIT "E"

In addition, your past record of misconduct while a Police Officer, when combined with your actions as set forth in the Pre-Disciplinary Action Notice can only lead us to the conclusion that you are unable or unwilling to improve your level of performance as a Police Officer, and leaves us with no alternative but to terminate your employment.

Very sincerely yours.

Mayor

Commissioner

Commissioner

RS/bak

cc: Mr. Bernard H. Richardson, Jr.
Chief Winston J. Orr
Mr. Lee Hale
Legal
Payroll
Budget
Mrs. Batton

PRE-DISCIPLINARY ACTION NOTICE

TO: WILLIAM H. McGILL
(Name of Employee)

FROM: BOARD OF COMMISSIONERS OF THE CITY OF MOBILE
(Appointing Authority)

SUBJECT: DISMISSAL
(Contemplated Disciplinary Action)

You are hereby advised that disciplinary action is contemplated against you for the following reasons: Violation of the following Rules of the Personnel Board of Mobile County: Rule 14.2(c) Conduct unbecoming an employee in the public service; (d) Disorderly conduct; (h) Insubordination; (i) Violation of a lawful or reasonable regulation or order made and given by a superior officer; and

(Continued on Pages 2 through 7, attached)

You are further advised that on October 11, 1983, at 3:00 o'clock P.M., in the City Commission Conference Room, City Hall, Mobile, Alabama, you will be allowed to respond orally or in writing to the above and attached charges, before a hearing officer to be designated by the Board of Commissioners, if you so desire. You are not required to make any statement at this interview if you do not desire to respond. You are not entitled to an adversary hearing at this time before the hearing officer to be designated by the Board of Commissioners of the City of Mobile.

Should you be disciplined, you have a right of appeal as granted by the Rules of the Personnel Board. You are entitled to have the assistance of counsel at the pre-disciplinary hearing.

SIGNATURE OF RESPONSIBLE OFFICIAL

CERTIFICATE OF SERVICE

A copy of the foregoing was delivered to the above named employee on 10-7-83 (date), at 11:50 AM. (time).

SIGNATURE OF DELIVERER

Violation of the following Rules and Regulations of the Mobile Police Department: Rule 1.02 - Unbecoming conduct (Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department. Conduct unbecoming an officer shall include that which brings the department in disrepute by eroding public confidence, reflects discredit upon the officer as a member of the department, or that which impairs the morale, operation or efficiency of the department, officer or assigned division); Rule 1.18 - Insubordination, (Officers shall promptly obey any lawful orders of a superior officer); Rule 1.25 - Courtesy (Officers shall be courteous to the public. Officers shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, officers shall not use coarse, violent, profane or insolent language or gestures * * *);

In that on August 26, 1983,at the K-Mart Department Store, 4665 Airport Boulevard, Mobile, Alabama at approximately 11:50 A.M. you were very disrespectful towards Cpl. William Garrick of the Mobile Police Department, your superior. Your actions toward Cpl. Garrick were rude, arrogant, and unprofessional. Cpl. Garrick had requested your assistance at the K-Mart Department Store, to help with the reports on a shoplifter there. When you arrived at the store you started arguing with Cpl. Garrick in a manner that was unprofessional and insubordinate. Your conduct was observed by the staff personnel at K-Mart. When Cpl. Garrick, in the presence of the personnel staff at K-Mart, ordered you to leave, you refused and continued to argue. This was degrading to your superior officer as well as the Mobile Police Department.

Violation of the following Rules of the Personnel Board: Rule 14.2 (c) Conduct unbecoming an employee in the public service; (d) Disorderly conduct; (j) Neglect of duty; (l) Violation of a lawful or reasonable regulation or order made and given by a superior officer; and

Violation of the following Rules of the Mobile Police Department: Rule 1.02 - Unbecoming conduct (See above); Rule

RAS

1.25 - Courtesy (See above); Rule 1.39 - Departmental Reports (Officers shall submit all necessary reports on time and in accordance with established departmental procedures * * *);

In that on August 30, 1983, you were assigned to investigate the complaint that a white female was attempting to cash an alleged forged check in the amount of $325.00 at the First National Bank, 4823 Overlook Road, Mobile, Alabama, on the account of Douglas Hammac, d/b/a/ Hammac Wrecker Shop, 2730 Highpoint Boulevard, Mobile, Alabama. Officer Robert Smith was assigned as backup unit.

When you arrived on the scene you began to argue with Mr. Hammac asking him to drop the charges against the white female who had attempted to cash the alleged forged check drawn on Mr. Hammac's account. When Mr. Hammac refused, you argued with him and engaged in a heated conversation with him, and called him a "damn liar". When Mr. Hammac asked you to call a supervisor, you refused, so Mr. Hammac requested Officer Robert Smith to call a supervisor, and Officer Smith complied. You also argued with Officer Smith, because he would not transport the white female to place her on docket, because Officer Smith wanted to wait for the supervisor, Sgt. Sweet's, arrival.

Further, you left the bank without filling out the proper reports and paper work. Officers Cynthia Taylor and Richard Wiggins were also investigating the complaint as backup officers and you refused to allow the backup officers to pull the arrested person's vehicle in.

Violation of the following Rules of the Personnel Board of Mobile County: Rule 14.2 (c) Conduct unbecoming an employee in the public service; (1) Violation of a lawful or reasonable regulation or order made and given by a superior officer; and

Violation of the following Rules of Conduct of the Mobile Police Department: Rule 1.01 - Violation of Rules (Officers * * * shall not commit any acts or omit any acts which constitute a violation of any of the rules, regulations, directives or orders of the Department * * *); Rule 1.02 - Unbecoming conduct (See above); Rule 1.30 - Public statements and appearances (A. Officers shall not

RHA

publicly criticize or ridicule the department, its policies, or other officers by speech, writing, or other expression, where such speech, writing, or other expression * * * undermines the effectiveness of the department, interferes with the maintenance of discipline, or is made with reckless disregard for truth or falsity. B. Officers shall not * * * appear on radio or television, prepare any articles for publication * * * release or divulge investigative information, or any other matters of the department while holding themselves out as representing the department in such matters without prior authority); Rule 1.37 Dissemination of information (Officers shall treat the official business of the department as confidential * * *);

In that on September 7, 1983, at approximately 10:40 P.M., while you were parked on Airport Boulevard in your police vehicle and while on duty, you observed an automobile with a blue emergency light flashing, proceeding east on Airport Boulevard near Downtowner Boulevard. You gave pursuit to determine who was operating a plain vehicle with a blue emergency light. At the intersection of Airport Boulevard and Windsor Place, in front of the Airport Twin Cinema, you turned on your blue lights and stopped the vehicle. You recognized the driver as the District Attorney of Mobile County, Mr. Chris Galanos, and inquired whether anything was wrong. Mr. Galanos replied that he had an emergency at his ex-wife's house and gave directions to the house to you (by proceeding to Dauphin at Upham, to Springhill Avenue and then on Springhill Avenue to DeSales to her apartment in the D'Iberville Apartments.) You instructed Mr. Galanos to follow you and you advised Police Communications that you were conducting an escort. You escorted Mr. Galanos at a high rate of speed and when you arrived at the destination on Portier Court, Mr. Galanos got out of his car and turned to thank you. From Mr. Galanos' actions you suspected he was intoxicated and requested him to get in the back seat of your Police car. Mr. Galanos asked you to allow him to check on the status of his ex-wife and child, but you refused, so Mr. Galanos got into the back of your patrol car. Although Mr. Galanos requested that you not to talk with his ex-wife without his presence because it would frighten her, you refused and instead questioned his ex-wife. When his ex-wife told you there was no emergency, you were convinced that Mr. Galanos had misled you to believe that an emergency existed and were further convinced that Mr. Galanos was intoxicated.

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Before you arrived at the destination you had asked for assistance from Cpl. Buddy Allen, and Cpl. Allen called his supervisors, Lt. Pete Holifield and Sgt. Obie Singletary to the scene. The supervisors determined that Mr. Galanos was not intoxicated. Although you insisted on having Mr. Galanos arrested, your supervisors determined that he should not be arrested because he was not intoxicated. They also determined from talking with Mrs. Galanos that there had been an emergency regarding their child, as their child had been lost earlier. Knowing that Mr. Galanos was the District Attorney, and that his actions would be of interest to the news media, you complicated the matter by giving interviews regarding the case to the news media, television, radio and newspapers, on or about September 9, 10, and 11, 1983. By these statements and accusations which you made to the news media against Mr. Galanos and the Mobile Police Department, you have publicly criticized and ridiculed the department and its officers, including Lt. Peter Holifield and Sgt. Obie Singletary, and those public statments have undermined the maintenance of discipline within the department, or were made with reckless disregard for truth or falsity.

Violation of the following Rules of the Personnel Board:

Rule 14.2 (c) Conduct unbecoming an employee in the public service; (h) Insubordination; (l) Violation of a lawful or reasonable regulation or order made and given by a superior officer; and

Violation of the following Rules of Conduct of the Mobile Police Department:

Rule 1.02 - Unbecoming conduct (See above); Rule 1.18 - Insubordination (See above); Rule 1.25 - Courtesy (See above).

In that on April 15, 1983, about 10:30 P.M., Det. Sgt. Wayne Farmer of the Mobile Police Department was on assignment investigating a robbery at the Goodyear Tire Store at 600 Government Street, Mobile, Alabama. Upon his arrival

at the scene, you were on duty and talking with one of the victims, the security guard. Officer Tommy Menton, a junior officer arrived on the scene, and you shouted to him, "Turn off those God damn blue lights". While the officers were investigating the case at the scene, Officer Leslie Kohn brought in another victim. Sgt. Farmer started to interview the victim outside your patrol car and asked you to turn your radio down so they could talk. You ignored Sgt. Farmer's request. Again, he asked you to turn the radio down. You walked off without doing so. Sgt. Farmer asked you to transport the complainant to C.I.D. You ignored his request and talked to other people at the scene. When Sgt. Farmer again told you to take the man to C.I.D., you asked if he, Sgt. Farmer, was in charge of the investigation, and when Sgt. Farmer replied that he was, you said you would take the man there, but still you did not do so. When Sgt. Farmer told you the third time to take the man to C.I.D., you told Sgt. Farmer in substance: "Back off, don't press your luck with me. I'll do it when I am ready."

Your actions towards Sgt. Farmer were highly unprofessional and insubordinate. Your actions were in the presence of your fellow police officers, junior to you, as well as in the presence of members of the public. Your conduct was unprofessional and detrimental to the department and your fellow police officers and undermines good discipline.

Your tour of duty as a police officer with the Mobile Police Department from the date of your employment, July 6, 1971, to and including September 11, 1983, has been one of deficiency in the characteristics and traits needed for functioning as a police officer.

By action of the Board of Commissioner, on August 15, 1972, you were suspended from duty for five (5) days effective August 23, 1972, for failing to submit the required forms for your military training leave and for violation of Rule 14.2 (a) - Absent without leave - of the Rules of the Personnel Board; by action of the Board of Commissioners of May 1, 1973, you were suspended from duty for three (3) days, effective May 4, 1973, for failure to comply with department procedures regarding handling of traffic accidents and making accident reports in violation of Rule 14.2(1) of the

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Personnel Board Rules - Violation of a lawful or reasonable regulation or order made and given by a superior officer; by action of the Board of Commissioners of June 28, 1977 and July 6, 1977, you were suspended from duty for three (3) days, July 5, July 8 and July 9, 1977, for violation of Rule 14.2(1) of the Rules of the Personnel Board - Violation of a lawful or reasonable regulation or order made and given by a superior officer; you were suspended for three (3) days effective September 26, 1977 for failure to appear in court having being ordered to do so.

By action of the Board of Commissioners, you were suspended for ten (10) days effective November 10, 1977 for violation of Rule 14.2(c) Conduct unbecoming an employee in the public service; Rule 14.2(i) Intoxication while on duty or public intoxication while off duty; and Rule 14.2(l) Violation of a lawful or reasonable regulation or order made and given by a superior officer, in that you, while in a very drunken condition fired a departmental shotgun in the air at the scene of a disorder at a lounge on Halls Mill Road on September 15, 1977; by action of the Board of Commissioners dated July 26, 1979, you were suspended for three (3) days effective August 1, 1979 for violation of Rule 14.2(l) Violation of a reasonable regulation or order made and given by a superior officer.

By action of the Personnel Board, dated February 18, 1983, you were suspended for a period of ten (10) days for insubordination.

The latest incidents of your misconduct while a member of the Mobile Police Department occurred in April, 1983, August 1983, and September 1983, as set out above, and based upon those incidents, in combination with your record of previous bad conduct, as outlined above, and your apparent unwillingness or inability to improve the level of your employment with the City, and your dismissal from the Mobile Police Department has been recommended by your superior officers.

APPENDIX "F"

CITY OF MOBILE

MOBILE, ALABAMA

October 18, 1983

PLEASE ADDRESS REPLY TO P. O. Box 1827

COMMISSIONERS

GARY A. GREENOUGH
FINANCE

ROBERT B. DOYLE, JR.
PUBLIC SAFETY

LAMBERT C. MIMS
PUBLIC WORKS

Honorable Robert B. Doyle, Jr.
Mayor/Public Safety Commissioner

Honorable Lambert C. Mims
Public Works Commissioner

Gentlemen:

After having carefully reviewed the reports and information concerning Officer William H. McGill, it is apparent that the incident which led to his termination was the incident which occurred on September 7th. Inasmuch as Officer McGill has not been charged with any wrong doing involving the District Attorney, it would be unfair, in my opinion, to terminate him as a result of the ensuing publicity surrounding this incident.

I have reviewed Mr. Blackwell's report, who served as the Pre-disciplinary Hearing Officer in this matter, and agree with his findings that the other incidents which were made a basis of the pre-disciplinary hearing are not sufficient in nature to require termination. Therefore, I cannot sign a letter of termination on this employee.

Sincerely,

Gary A. Greenough
Finance Commissioner

EXHIBIT "F"

APPENDIX "C"

IN THE CIRCUIT COURT
OF MOBILE COUNTY, ALABAMA

REPORT OF THE OCTOBER
1983 MOBILE COUNTY GRAND JURY

We, the October session convened on October 24, 1983, respectfully present the folowing report to the Court. We considered four cases and submit one misdemeanor indictment.

The Grand Jury recommends that the practice of prescribing scheduled drugs by the medical community of Mobile be investigated at some future date.

We further find that the procedures followed by the Mobile Police Department on the night of September 7, 1983 left a lot to be desired and should be reviewed in light of this report.

The Grand Jury found no evidence to support the charge that there was, on or before the night of September 7, 1983, any conspiracy to discredit Mr. Galanos in order to hinder any investigation that he may have had in progress.

Finally, the Grand Jury found no evidence to support the charge that Officer Billy McGill violated Alabama Code, Title 36-10-5 which prohibits the unlawful detention of another under color of officer.

With this report, we respectfully ask to be placed in recess until the next session of the Grand Jury.

Troy B. Crane, Foreman

Joan H. Leiser

Guerry B. Isler

Gwendolyn B. Towner

Linda H. Chruszczyk

Alva Y. Johnston

Edna B. Morris

Cussie A. Jackson

Audrey F. Robinson

Sheridean C. Hacker

Evelyn A. Gamble

Ruth B. Parnell

EXHIBIT "C"

Douglas M. Franklin

Jesse H. Walker

Bobby R. Varner

Gaylord E. Waldrop

Katherine K. Mattei

Anna D. Odom